HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.645 of 2007

Between:

S.L. Kantham … Appellant

And

The Labour Court-II, represented by
its Presiding Officer,
Hyderabad and another. … Respondents

:: J U D G M E N T ::

Counsel for the appellant : Sri V. Narasimha Goud

6th September, 2007

Per G.S. Singhvi, C.J.

Having failed to persuade the learned Single Judge to entertain his prayer for modification of award dated 21-4-2001 passed by Presiding Officer, Labour Court-II, Hyderabad in I.D.No.7 of 1998 and for issue of a mandamus to respondent No.2 to pay him back wages and other benefits for the period between 28-2-1991 i.e. the date on which he was removed from the service and the date of reinstatement, the appellant has filed this appeal under Clause 15 of the Letters Patent.

The appellant joined the service of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') as Conductor on

11-3-1977. He was removed from service vide order dated 28-2-1991. During this period, he suffered various punishments. One of these punishments was in the form of removal from service, but, later on, he was reinstated.

On 14-5-1990, an enquiry was instituted against him on the following charges:

1. For having collected Rs.103/- from a batch of two passengers who boarded your bus at Guntur and bound for Ramayanpet ex.stages 25 to 7 and issued the ticked Nos.063/277105 to 108 of Rs.25/- denomination which are reissued and unconnected to your ticket tray and SR and also issued 155/650692 to 963 of Rs.2/- denomination which were already accounted against stage No.25 i.e. Guntur.
2. For having collected Rs.44/- from one individual passenger who boarded the bus at Guntur bound for Siddipet ex.stages 25 to 9 and issued the unconnected tickets of Rs.4/- denomination each one accounted against stage No.25.
3. For having collected Rs.12/- each total Rs.60/- from batches and individual passengers who boarded the bus at Suryapet and bound for Jangaon ex.stages 17 to 13 and issued the following tickets:
   148/597270 to 271 of Rs.10/- each 2-unconnected. 149/596378, 382, 383 of Rs.10/- deno., each-3-reissued, 155/652968 to 970 of Rs.2/- deno., each-5.
4. For having collected Rs.20.50 from adult passengers of (two) and 10.25 from two chargeable children instead of Rs.10.50 who boarded your bus at Suryapet and bound for Siddipet ex.stages 17 to 9 and issued the following tickets:
   059/627275 of Rs.20/- deno. Each one unconnected to tray, 131/840581 of Rs.0.50 ps. each one not accounted, 149/596375, 376, 380 and 381 of Rs.10/- deno., each 6 reissued, 159/520159 to 160 of Rs.0.25 ps. deno. Batch (2) not accounted in SR, 131/840580 of Rs.0.50 ps deno., not accounted in SR.
5. For having failed to close the SR against stage No.15, while you were conducting the bus No.4269 on route Guntur to Bodhan on 5.5.90.

The appellant filed reply and denied the charges. The disciplinary authority did not accept his explanation and appointed an

officer to enquire into the charges. The enquiry officer submitted report with the finding that all the charges have been proved against the delinquent. Thereafter, show cause notice was issued to the appellant proposing his removal from service. He filed reply to contest the notice. After considering the same, the disciplinary authority passed order dated
28-2-1991 and confirmed the proposed punishment. The appeal and review filed by the appellant against the order of punishment were dismissed by the appellate authority and reviewing authority vide their respective orders dated 22-10-1991 and 14-10-1992.

After more than seven years of his removal from service and five years of dismissal of the review petition, the appellant filed an application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, 'the Act'), as amended by Andhra Pradesh Act No.32 of 1987, questioning his removal from service. He pleaded that the enquiry held against him is vitiated due to violation of the rules of natural justice and that the findings recorded by the enquiry officer were perverse. In the counter filed on behalf of the Corporation, it was averred that the appellant had been removed after holding regular departmental enquiry and no leniency should be shown to him because of past adverse record.

On the pleadings of the parties, the learned Presiding Officer of the Labour Court framed the following points for consideration:

1. Whether the respondent was justified in removing the petitioner from service?
2. If not, to what relief is the petitioner entitled?

The appellant examined himself as W.M.1 and produced six documents, which were marked as Exs.W1 to W6. The Depot Manager, Bodhan appeared as M.W.1 and produced three documents,

which were marked as Exs.M1 to M3. In his statement, the Depot Manager stated that the documents pertaining to the appellant's case were stolen from the depot and even though the complaint was filed in the police, the same could not be traced.

The learned Presiding Officer of the Labour Court evaluated the evidence and held that the disciplinary authority has failed to prove charges No.1 to 4. This is evinced from the following extracts of the award:

> … So, the evidence of M.W.1 clearly says that none of the documents relating to the check are placed before this Court. The respondent has not examined either the checking officials who exercised check or the passengers connected with the irregularity to prove the charges leveled against the petitioner. As the documents pertaining to the check are not available, the respondent should have examined the checking officials and the passengers connected with the irregularity to prove the charges. M.W.1 was not an eye witness to the check. He was not working in Bodhan depot on the date of check. The check was exercised on 5.5.90 but M.W.1 worked in Bodhan from 12.11.90 to 3.11.91. He had no personal knowledge about the misconduct alleged to have been committed by the petitioner. There is absolutely no evidence either oral or documentary produced by the respondent to prove the charges leveled against the petitioner. In the absence of either the check documents or the evidence of checking officials or the passengers connected with the irregularity, it is not possible to know whether the petitioner committed the misconduct as alleged in the charge sheet. The petitioner denied the charges leveled against him. The petitioner as W.M.1 stated in his evidence that the checking officials did not obtain the statement of the passengers in support of the allegations leveled against him in the charge memo and they did not exhibit the tickets seized from the passengers during the domestic enquiry. He further stated in his evidence that all the passengers traveling in the bus were holding the valid tickets issued by him and those tickets were supplied by the depot authorities of Bodhan. He further stated that the ticket blocks supplied to him were noted in the SR and way bill of 5.5.90. Even in the explanations submitted to the charge memo and charge sheet, the petitioner denied all the charges except charge No.5. Charge Nos.1 to 4 related to cash and ticket irregularities. Since the petitioner had denied the charges 1 to 4 is for the

respondent to prove those charges by producing some positive evidence. Except the oral evidence of M.W.1 who was not a witness to the check and who had no personal knowledge about the check there is no other evidence either oral or documentary to prove the charges leveled against the petitioner. Therefore, I hold that the respondent failed to prove charges 1 to 4 against the petitioner."

The learned Presiding Officer confirmed the finding recorded by the enquiry officer in respect of charge No.5, but observed that the same was not serious enough to warrant the appellant's removal from service. He then invoked the doctrine of proportionality and ordained reinstatement of the appellant. However, he declined the relief of back wages and also directed that the period between the date of removal and the date of reinstatement shall be treated as suspension without pay. The reasons for denial of back wages and other benefits to the appellant, as spelt out from the award of the Labour Court are:

"The petitioner joined the service of APSRTC on 11-3-1997 and he was removed from service by the order dated 28-2-1991. So, by the date of his removal from service, the petitioner had put in about 14 years of service. Ex.M3 is the xerox copy of the service record of the petitioner. A perusal of Ex.M3 shows that the petitioner was imposed several punishments including the punishment of removal from service previously. The petitioner deposed in his chief examination that he preferred departmental appeal before the Depot Manager, Nizamabad and it was rejected. He preferred review petition before the Regional Manager, Kareemnagar and it was rejected. He submitted a petition before the Managing Director-cum-Vice-Chairman, APSRTC stating that his removal from service was illegal and unjustified. It is stated in the petition filed by petitioner that his appeal was rejected by the appellate authority on 22-10-1991 and his review petition was rejected on 14-10-1992. He did not state I his petition that he filed petition before the Managing Director-cum-Vice-Chairman stating that the order of removal passed against him was illegal and unjustified. So, there was delay of more than five years in filing this petition after the rejection of review petition. After taking into consideration the delay in filing this petition, the previous record of the petitioner and the gravity of proved misconduct committed by him I am of the

considered view that ends of justice would be met if the petitioner is reinstated into service with continuity of service but without back wages and the period from the date of removal to the date of reinstatement is treated as period under suspension without pay."

The learned Single Judge dismissed the writ petition filed by the appellant by observing that the scope of the High Court's power of judicial review in such matters is extremely limited. He referred to the judgments of the Supreme Court in **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[1] and **Karnataka Bank Ltd. v. A.L. Mohan Rao**[2] and held that the relief of back wages and other monetary benefits do not follow as a necessary concomitant of an order of reinstatement.

Sri V. Narasimha Goud, learned counsel for the appellant made strenuous efforts to convince us that notwithstanding the unexplained delay of five years in filing the application under Section 2-A(2) of the Act, the learned Presiding Officer of the Labour Court was duty bound to reinstate his client with all consequential benefits because the termination of his service by way of removal was found to be arbitrary and unjust. Learned counsel emphasized that while ordering reinstatement of the appellant, the learned Presiding Officer could not have deprived him of the substantive service benefits by directing that the period between the date of removal and the date of reinstatement shall be treated as suspension without pay.

We have considered the submissions of the learned counsel, but do not find any merit in them. The rule that a declaration of invalidity of the termination of the service of the workman should necessarily follow an order of reinstatement with full financial benefits was applied by the Courts till mid-1990's, but the same has been substantially diluted in the last about one decade. In the recent past,

the Supreme Court has consistently held that the relief of back wages and other ancillary benefits cannot be claimed by the workman as of right and the adjudicating bodies constituted under the Act have ample discretion to mould the relief in the cases of unlawful and/or unjust termination of service. In every such case, the Labour Court/Industrial Tribunal has to keep in view the gravity of the misconduct found proved against the workman, his past record and then decide whether an order of reinstatement which is preceded by a declaration of invalidity qua the action taken by the employer should be accompanied by an order for grant of other benefits including back wages. This position is clearly discernible from the judgments of the Supreme Court in **Allahabad Jal Sansthan v. Daya Shankar Rai**[3], **GM, Haryana Roadways v. Rudhan Singh**[4], **M.L. Binjolkar v. State of M.P.**[5], **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[6], **U.P.SRTC Ltd. v. Sarada Prasad Misra**[7], **Municipal Council, Sujanpur v. Surinder Kumar**[8] and **J.K. Synthetics Ltd. v. K.P.Agrawal**[9].

In **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey** (supra), the Supreme Court referred to large number of judicial precedents on the subject and held:

> "Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result, but now, with the passage of time, a pragmatic view of the matter is being taken by the court realising that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched. The changes brought about by the subsequent decisions of this Court,

probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident.

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act. While granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence."

In **J.K. Synthetics Ltd. v. K.P.Agrawal** (supra), the Supreme Court held:

"The manner in which "back wages" is viewed, has undergone a significant change in the last two decades. They are no longer considered to be an automatic or natural consequence of reinstatement. There has also been a noticeable shift in placing the burden of proof in regard to back wages. There is also a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether "continuity of service" and/or "consequential benefits" should also be directed."

Section 11-A, which was inserted by the Industrial Disputes (Amendment) Act, 1971, empowers the Industrial Tribunal etc. to apply the doctrine of proportionality and interfere with the discretion exercised by the employer to punish the employee. It also empowers the adjudicating body to grant appropriate relief to the workman, as may be considered just and proper. It is, thus, evident that the

Legislature has designedly conferred power upon the Industrial Tribunal etc. to grant appropriate relief in the cases of wrongful termination of service of the workman. This necessarily implies that after recording a finding of invalidity qua the action taken by the employer, the Industrial Tribunal etc. can order reinstatement with or without back wages and/or with or without the benefit of continuity of service and other fringe benefits. In a given case, the Tribunal can deny relief of reinstatement and simply award compensation. In another case, the Tribunal can award reinstatement without back wages and continuity of service. So far, the Superior Courts have neither evolved nor it is desirable to evolve a straight-jacket formula, which can be uniformly applied to all the cases, and each case has to be decided on the given set of facts.

If the appellant's case is examined in the light of the above noted propositions, we have no hesitation to hold that the learned Presiding Officer did not commit any illegality by declining the benefit of back wages and by directing that the period between the date of removal from service and reinstatement shall be treated as suspension without pay. Undisputedly, the appellant had moved the Labour Court after seven years of his removal from service and more than five years of dismissal of the review petition filed against the order of punishment. In our considered view, this unexplained delay was, by itself, sufficient to deny the relief of back wages to the appellant and the learned Single Judge rightly declined to modify the award of the Labour Court.

We may add that in the backdrop of the facts brought on the record of I.D.No.7 of 1998, the learned Presiding Officer of the Labour Court would have been fully justified in passing a simple order of re-employment of the appellant instead of ordering his reinstatement with continuity of service and this Court would not have interfered with the

discretion exercised by the learned Presiding Officer because, while exercising the power under Article 226, the High Court cannot be oblivious of the fact that in 14 years service, the appellant had suffered several punishments including the one of removal from service. It is a different thing that at one stage he succeeded in getting himself reinstated.

In the result, the appeal is dismissed.

G.S. SINGHVI, C.J.

6th September, 2007.

C.V. NAGARJUNA REDDY, J.

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[1] (2006) 1 SCC 479
[2] (2006) 1 SCC 63
[3] AIR 2005 SC 2371
[4] (2005) 5 SCC 591
[5] (2005) 6 SCC 224
[6] (2006) 1 SCC 479
[7] (2006) 4 SCC 733
[8] (2006) 5 SCC 172
[9] (2007) 2 SCC 433